

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

REVIEW OF COMMISSION'S PRICE CAP RULES

Docket No. RM2013-2

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE
(June 3, 2013)

The United States Postal Service hereby replies to the initial comments that have been submitted regarding the price cap rules proposed by the Postal Regulatory Commission in this docket.¹ In particular, the Postal Service focuses on comments concerning the price cap implications of promotions.

I. Price Cap Implications of Promotions

Several parties advise the Commission to bar the Postal Service from recovering as rate adjustment authority any revenue that is forgone because of promotions.² The Postal Service disagrees, and offers the following points of clarification.

First, the timing of a promotion's filing or implementation should not affect whether the promotion results in rate adjustment authority. As explained further below, the current price cap rules are largely designed for annual price changes and do not effectively address mid-year price changes, so the rules could be improved in this

¹ Notice of Proposed Rulemaking Requesting Comments on Proposed Commission Rules for Determining and Applying the Maximum Amount of Rate Adjustments, Docket No. RM2013-2 (Mar. 22, 2013).

² See, e.g., Comments of the Association for Postal Commerce, Docket No. RM2013-2 (May 16, 2013); Comments of the National Association of Presort Mailers, Docket No. RM2013-2 (May 16, 2013); Comments of Pitney Bowes Inc., Docket No. RM2013-2 (May 16, 2013).

regard. However, there is no logical reason to disallow the creation of rate adjustment authority when a promotion is filed or implemented mid-year, if the Commission would have allowed it were the promotion combined with an annual price change.

Second, from a price cap perspective, there is no practical difference between a non-promotional decrease in rates and a promotion that decreases rates for qualifying mailers; both result in lower rates for some volume of mail. It is indisputable that the former – a non-promotional decrease in rates – results in the creation of rate adjustment authority. So too should it be with the latter. Indeed, that is the established practice of the Commission, as recognized in Docket No. R2013-1, and as reflected in proposed Rule 3010.23(e).

More than one commenter tries to cast the Docket No. R2013-1 decision as an aberration, as compared to prior rulings on promotions. The critical distinction between Docket No. R2013-1 and prior promotions was the Postal Service's discretionary decision not to seek rate adjustment authority in the prior promotions, rather than any analytical choice made by the Commission. The Postal Service's statutory pricing flexibility should not be hemmed in by its own discretionary choices. And apart from pointing to the Postal Service's decision not to seek rate adjustment authority in prior promotions, the parties who oppose the Postal Service recovering promotional amounts as rate adjustment authority offer no other distinguishing characteristic to explain why

promotional rate decreases should not result in rate adjustment authority while non-promotional rate decreases should.³

Third, as explained by the Postal Service in Docket No. R2013-6, the Commission's price cap rules are not presently designed for mid-year promotions. The rules, both in their current and proposed forms, presuppose that every rate adjustment proceeding involves rate increases. Where the Postal Service files a rate adjustment notice only to create a promotion or incentive program, or simply to decrease certain rates, strict application of the rules would necessitate that the Postal Service calculate rate adjustment authority just as it would in an annual adjustment, and either use the authority immediately or "bank" it. In the past, when the Postal Service has decided not to seek rate adjustment authority from a promotion, the Commission has prudently sidestepped this outcome by likening the promotion to a separate regulatory context.⁴

To avoid having to continue departing from the rules to accommodate mid-year promotions or rate decreases, it would be useful for the Commission to expand its proposed rules to specifically address such situations. As stated in Docket No. R2013-6, the Postal Service would prefer that, in the case of mid-year promotions and more generally any rate decreases, it be allowed to forgo a full-scale rate adjustment authority calculation and simply calculate the authority resulting specifically from the promotion or rate decrease, and then use such authority in the next annual price adjustment, when a full rate adjustment authority calculation would be made. If the

³ To reach that result, one would have to take the position that promotions are not price changes. That has not been the Commission's position thus far. If, however, it chooses to adopt that position, the Commission would do well to precisely define what does and does not constitute a price change.

⁴ See, e.g., Order No. 1296, Docket No. R2012-6 (Mar. 26, 2012).

Commission does not adopt that approach, then, at the very least, its rules should allow the Postal Service to convert revenue forgone in promotions as well as any other rate decreases into unused rate adjustment authority, without conducting a full-scale calculation of all of the rate adjustment authority that has accrued since the last annual price adjustment. Such a modification would contravene neither the language nor the general purpose and spirit of the statutory price cap limitation.

Fourth, the exercise of setting rates to reflect price cap authority is inherently imprecise. It is therefore impractical to expect that, when rate adjustment authority results from a promotion, the authority will be applied only to the rate cells used by the mailers qualifying for the promotion. In most cases, the qualifying criteria for a promotion will not align perfectly with rate cells. Moreover, pricing authority is not segregated by its source. Rather, all pricing authority (whether from CPI or from promotions and rate decreases) is typically applied at one time.

This is all taken as a given in an annual price change, where it is analytically impossible to isolate the rate adjustment authority resulting from a promotion from the other rate adjustment authority being applied in the price change. With a mid-year promotion (assuming that the Postal Service is forced to use the rate adjustment authority connected with the promotion immediately), the only difference is that the impacts on various types of volume become more visible – the underlying realities of pricing remain the same, and some rate cells with volumes that do not qualify for the promotion would likely see increases.

II. Other Issues

One party advises the Commission to expand the instant rulemaking by creating three new rules for negotiated service agreements (NSAs).⁵ The Postal Service opposes this suggestion on both procedural and substantive grounds. Procedurally, NSAs fall outside the subject matter of the instant rulemaking. And substantively, the issues raised by the three suggested rules would best be addressed by the Commission on a case-by-case basis, with the benefit of factual inquiries, rather than preemptively through rules.⁶

Another party believes that the definition of class in the proposed rules is imprecise and offers an alternative.⁷ Proposed Rule 3010.1(b) states:

Class means a class of market dominant products.

The alternative offered is:

Class means a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.⁸

⁵ Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on Notice of Proposed Rulemaking, Docket No. RM2013-2 (May 16, 2013) ("Valpak Comments"), at 11-13.

⁶ See, e.g., Order No. 1391, Docket No. RM2003-5 (Feb. 11, 2004) (Postal Service should have considerable latitude to appropriately formulate its response to the characteristics of a specific proposal, particularly when providing a financial analysis); Order No. 694, Docket Nos. MC2011-19 and R2011-3 (Mar. 15, 2011), at 19-20 (quoting Order No. 1391, *supra*) (Commission has been clear that the determination of whether a mailer is similarly situated "is a factual inquiry" that is "more appropriately reserved for allegations of possible discrimination"); 39 U.S.C. § 3622(c)(10) (showing that Congress specifically intended for the Postal Service to enter into NSAs with particular mailers as long as functionally equivalent NSAs are made available to similarly situated mailers).

⁷ Comments of MPA – The Association of Magazine Media, Docket No. RM2013-2 (May 16, 2013).

⁸ *Id.* at 2.

The proposed alternative directly conflicts with 39 U.S.C. § 3642, as the rule would require the Commission to ignore any changes to the market-dominant and competitive product lists approved under section 3642 when it applies its price cap rules.

Finally, one party recommends that the Commission create and maintain an indexed library of Commission-approved cost models, in furtherance of proposed Rule 3010.12(e).⁹ The Postal Service supports this recommendation.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing & Product Support

Nabeel R. Cheema

Brandy A. Osimokun

David H. Rubin

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1135
(202) 268-7178, Fax -6187
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⁹ Comments of Pitney Bowes Inc., Docket No. RM2013-2 (May 16, 2013), at 2-3.